Supreme Court, U.S.
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No. 02-1009

In The
Supreme Court of the United States

DON FILIPPO SCICCHITANO, CATERINA ANNA SCICCHITANO,
by and through their parents and natural guardians,
Carmine Scicchitano and Maria Scicchitano;
SAMANTHA JO STANCAVAGE,
by and through her parents and natural guardian Michael Stancavage,

Petitioners

v.

MT. CARMEL AREA SCHOOL BOARD,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Michele J. Thorp, Esquire
Counsel of Record
THOMAS, THOMAS & HAFER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108-0999
(717) 237-7153
Counsel for Respondent,
Mt. Carmel Area School Board

13 pp

QUESTION PRESENTED

Were Don Filippo Scicchitano, Caterina Anna Scicchitano and Samantha Jo Stancavage's claims regarding the Mount Carmel Area School District dress code policy moot and did they have standing to bring such claims at the time of trial?

PARTIES TO THE PROCEEDINGS

All parties to this proceeding were parties before the Third Circuit Court of Appeals.

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REASONS FOR DENYING WRIT

I. Don Filippo Scicchitano, Caterina Anna Scicchitano and Samantha Jo Stancavage's claims regarding the Mount Carmel Area School District dress code policy were moot and they no longer had standing to bring such claims at the time of trial of this matter.

Petitioners Don Filippo Scicchitano, Caterina Anna Scicchitano, by and through their parents and natural guardians Carmine Scicchitano and Maria Scicchitano, Samantha Jo Stancavage, by and through her parents and natural guardian Michael Stancavage, ("Petitioners") are seeking to have this Honorable Court grant a Writ of Certiorari for this case. In their Brief in Support of Petition for Grant of Certioriari, Petitioners discuss many issues, but fail to address the reasons for the 3rd Circuit decision in this case. [1] The 3rd Circuit did not reach the underlying issues in

[1] While the following does not pertain to the issues discussed in the within Brief, it is offered pursuant to Supreme Court Rule No. 15 which admonishes counsel that they should address any perceived misstatements of fact or law that appear in the Petition and would bear on the Court if Certiorari were granted.

this case because Petitioners did not have standing and their claims had been rendered moot. Accordingly, the 3rd Circuit entered an Order vacating the District Opinion in favor of Respondents Mt. Carmel Area School District ("Respondents"), and dismissing the case for lack of standing. Petitioners have offered nothing to challenge the decision concerning standing, which is a bar to the review of their underlying claims.

The law concerning standing and mootness is well-established. Courts are limited by Article III of the Constitution to adjudicating only live cases or controversies, and are therefore unable to decide questions that have become moot or which are brought by individuals without standing to bring suit. DeFunis v. Odegaard, 416 U.S. 312 (1992). A plaintiff must bring an actual case or controversy in order to sustain jurisdiction in a federal court. City of Los Angeles v. Lyons, 461 U.S. 95, 101-102 (1983).

Petitioners state in their Statement of Facts that the school administration disciplined the students for protesting the uniform policy and refused to recognize the students' freedom of speech and restricted the students freedom of expression. These are not accurate statements. In fact, the school administration permitted a number of "protests" concerning the dress code. Only one logo was not permitted to be worn by the school administration and that was due to a concern for substantial disruption in the school environment.

Additionally, Petitioners state that there was a "constructive dismissal" of the students. A review of the facts of the case indicates that is also a misstatement.

The Supreme Court has stated that "the plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged...conduct and [that] the injury or threat of injury [is] both 'real and immediate,' not 'conjectural' or 'hypothetical.'" Id. (citations omitted). Such an injury should be "legally recognizable" under a three-part test developed by the Supreme Court for determining standing. See Bennett v. Spear, 520 U.S. 154, 167 (1997). That three part test requires that the pleadings "show: (1) a legally recognized interest; (2) caused by the named defendant or at least 'fairly traceable to the challenged action of the defendant'; and (3) that a favorable decision by the court would likely redress." Pryor v. NCAA, 288 F.3d 548 (3d Cir. 2002) (citing Bennett at 167). Further, the Plaintiff must show that he is asserting his own legal rights and interests, and cannot rest a claim for relief on the rights and interests of third parties harmed by the challenged action. Warth v. Seldin, 422 U.S. 490, 499 (1975) (citing Tileston v. Ullman, 318 U.S. 44 (1943); United States v. Raines, 362 U.S. 17 (1960); Barrows v. Jackson, 346 U.S. 249 (1953)).

A case or controversy must be present at each stage of the litigation, not merely at the time the Complaint is filed. Arizonans for Official English v. Arizona, 520 U.S. 43, 67

(1997). Where an employee has left a job governed by a statute implicating a right and does not intend to return, or where a student has graduated from a school allegedly violating a constitutional right, a case or controversy no longer exists. See Arizonans for Official English v. Arizona, 520 U.S. 43, 67 (1997); DeFunis v. Odegaard, 416 U.S. 312 (1992).

The Third Circuit cited several cases in support of their decision that the claims brought by the Plaintiffs in this case were barred because they lacked standing. These case include Pederson v. Louisiana State University, 213 F.3d 858 (5th Cir. 2000). In Pederson, the court determined that a student's graduation mooted her claims against the University for violations of Title IX. Specifically, they alleged that the University failed to provide equal opportunities for the girls to play athletics, to compete for and receive scholarships, and to the benefits LSU provided to its athletes. Id. at 864. The Court stated that a Plaintiff must show an injury in fact, caused by the defendant, that is redressable, in order to have standing. The Plaintiffs involved had graduated from LSU already and would not benefit from a favorable ruling granting injunctive relief. As a result, the Court held that Plaintiffs' claims were moot.

A similar holding was set forth in Fox v. Board of Trustees of the State University of New York, 42 F.3d 135 (2d Cir. 1994), also cited by the Court below. In that case, Plaintiffs challenged a S.U.N.Y. policy prohibiting cookware demonstrations in dorm rooms. The court found that after a student's graduation, absent a claim for damages, it is impossible for courts to redress the injury through their remedial powers. Id. at 140. They noted that a case becomes moot when "the parties lack a legally cognizable interest in the outcome." Id. However, the court also noted that even if the Plaintiffs had included a claim for damages against the Defendants, the court would have been without a way to redress the injury because the university was immune from suit. Id. at 141-142.

With respect to the elements required for proving standing, the Third Circuit cited to Roe v. Operation Rescue, 919 F.2d 857, 864 (3d Cir. 1990). As mentioned above, a Plaintiff is generally required, in order to obtain injunctive relief, to show that she is likely to suffer future harm, she is likely to be injured by the defendant, and that the relief she seeks will prevent the injury from occurring. Id. In that case, the Court found that a Plaintiff requesting an injunction against anti-abortion demonstrators had standing to sue for injunctive relief despite the fact that the defendants had never

demonstrated at that particular abortion clinic because there was a real and immediate threat that defendants would cause harm to their facilities in the future because of their extensive picketing throughout the area. Id. at 865.

In the instant case, two of the Petitioners (the Scicchitano children) were no longer students in the Mount Carmel Area School District at the time of trial. The evidence showed that the Scicchitano children left the Mount Carmel Area School District to be hōme-schooled in order to protest the dress code and at the direction of mental health professionals. See Appendix filed with the Third Circuit at 1234 and 1238. Therefore, the dress code that was the basis of their claims no longer applied to the Scicchitanos. Furthermore, there was no evidence presented to indicate whether the students planned on returning to the school if a decision was rendered in their favor. The only damages sought by Petitioners related to injunctive relief and, as a result, a favorable decision by the court would not have "redressed the claimed injury." The Scicchitano children did not meet the requisites for standing and their claims had been rendered moot.

As the Third Circuit also discussed, this is not a case where the claims are "capable of repetition, yet evading review." See e.g. Brody v. Spang, 957 F.2d 1108 (3d Cir.

1992) (wherein the court ruled that a challenge to a religious graduation ceremony speech was not moot where the length of the school year was too short to complete the litigation and the Plaintiff-parents had other children who would presumably attend the graduation ceremony in later years). In this case, the Scicchitano children were years away from graduation and the claims certainly could have been litigated before the end of their school career.

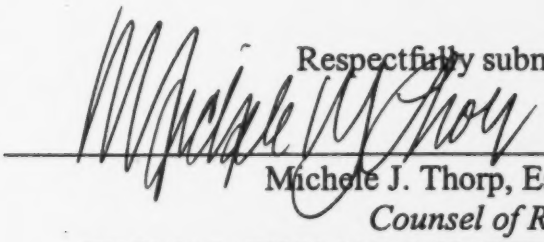
The remaining Petitioner, Samantha Jo Stancavage, also did not have standing to pursue a claim. Unlike the Scicchitanos, Ms. Stancavage remained a student within the Mount Carmel Area School District. However, she never showed any injury or distinct threat of future injury to satisfy standing requirements and overcome the mootness issue. She did not wear the "protest logo" in question and did not present evidence that she wanted to wear the "protest logo", but was prevented from doing so because of her fear of harm. A possible future harm that may not occur at all is not sufficient enough to justify standing. Pryor v. NCAA, 288 F.3d 548, 561 (3d Cir. 2002).

Under the established line of case concerning mootness and standing, Petitioners were precluded from pursuing their claims. Therefore, this Honorable Court should not accept review of this case.

CONCLUSION

As discussed in Supreme Court Rule 10, Considerations Governing Review on Certiorari, a Petition for a Writ of Certiorari will be granted only for compelling reasons. Compelling reasons are not presented by this case. The Third Circuit decision was not in conflict with other prior decisions and was based on an established area of the law. Petitioners in this case did not have standing at the time of the trial of this matter, and further, their claims for injunctive relief had been rendered moot. Despite Petitioners' attempt to entice this Court to hear the underlying constitutional issues, Petitioners cannot refute the fact that they had no standing to pursue their claims. Therefore, Respondent opposes the Petition for Writ of Certiorari in this case.

Respectfully submitted,



Michele J. Thorp, Esquire
Counsel of Record
THOMAS, THOMAS & HAFER, LLP
305 North Front Street
P.O. Box 999
Harrisburg, PA 17108-0999
(717) 237-7153
Counsel for Respondent,
Mt. Carmel Area School Board